

## APPEAL NO. 93128

On January 20, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding. The only issue was: "[h]ow much fee, if any, does the claimant owe his attorney for services rendered from May 4, 1992 through October 30, 1992." The hearing officer approved attorney's fees as previously awarded. Appellant, claimant herein, appeals asserting that the attorney's fees are excessive and alleges evidence he presented disproving the awarded amount of attorney's fees "were disregarded completely." Respondent, attorney herein, files a response and alleges that the hearing officer failed to address attorney's contention that the entire amount of her fee be awarded without reduction.

### DECISION

We affirm the decision on attorney's fees.

Claimant hired the attorney, on or about March 27, 1992, to represent him in his claim for workers' compensation benefits. Claimant acknowledged he signed a contract with the attorney, agreeing to pay the fee approved by the Texas Workers' Compensation Commission (Commission). The claimant testified that he was not dissatisfied with the services rendered by the attorney. The worker's compensation case was apparently resolved at some state not clear in the record, and the attorney submitted a fee affidavit reciting 15 hours worked at \$125.00 an hour. The attorney testified, and the hearing officer found, that \$125.00 an hour is a reasonable rate for an attorney in the Houston area. We do not disagree.

The attorney submitted her fee affidavit for specific services rendered showing 76 entries for "client conferences" ranging from 5 to 15 minutes each, on 76 different dates between May 4, 1992 and October 28, 1992, including some weekends and holidays (e.g. May 25, 1992 which was Memorial Day). Based on this "itemization" the attorney claimed 15 hours at \$125.00 an hour for a total of \$1875.00. When the various client conferences were totaled they amounted to 12.75 hours, rather than the 15 hours recited. The Commission initially approved 11.75 hours at \$125.00 an hour for 76 client conferences from May 4, 1992 to October 30, 1992. However, because the initial affidavit was not signed or dated, it was returned to the attorney. In the meantime, for whatever reason, the attorney wrote the Commission, by letter dated November 6, 1992, voluntarily reducing her fee to "\$937.50 approximately one half of the itemized billable hours spent on the case." We note this statement is in error in that "one half of the itemized billable hours" is only 6.375 hours (12.75 hours divided by one-half), and that amount times \$125.00 an hour would only be \$796.88. Nevertheless, the Commission accepted the voluntary reduction in the attorney's fee to \$937.50 (obviously never having computed the actual itemized billable hours). The Commission order for attorney fees is dated November 24, 1992.

Basically the claimant challenges the 76 itemized client conferences on 76 different days, including some holidays and weekends, as unreasonable and implies the dates and

times were fabricated. Claimant testified he did not confer with the attorney on any Sunday (e.g. August 23, 1992, a Sunday, claimant was billed for a five minute client conference) or on May 25, 1992, Memorial Day, when the attorney recorded a 15 minute client conference. The attorney responded that "client conferences" included calls and conferences with insurance adjustors and doctors. The claimant in testifying at the CCH was still skeptical that the attorney did much conferencing with adjustors and doctors on weekends and holidays. The attorney further testified that client conferences also included time spent in review and preparation of client's case. (We would note here that everyone would have been better served had the attorney itemized the specific services she performed in the different categories, as contemplated on the fee application (TWCC-152) form.) Claimant at this point stated that in view of the ever expanding definition of "client conference" he was at a loss to further refute the attorney's allegation, but noted that it appears strange for an attorney to work on a case 5 to 10 minutes at a time "almost everyday."

We note that under Tex. W.C. Comm'n, TEX. ADMIN. CODE § 152.4 (Rule 152.4) the maximum hours allowed for client conferences is two hours per month. The attorney was originally awarded the following hours for client conferences, by month.

May - 2.0 hours	August - 1.9 hours
June - 2.0 hours	September - 1.9 hours
July - 1.8 hours	October - 1.75 hours
Total--11.35 hours X \$125.00/hour = <u>\$1418.75</u>	

The attorney, by letter dated November 6, 1992, voluntarily reduced her fee to \$937.50. We do not comment or rule that this amounts to a novation, as indicated by the hearing officer in his Conclusion of Law No. 2, but merely accept that the attorney has reduced her claimed fee to an amount less than the maximum allowed for client conferences. We would again note that it would have been desirable for the hearing officer to have developed the record to show consideration of the matters set out in Article 8308-4.08(c)(1). However, in view of claimant's testimony that he was not dissatisfied with the attorney's services and that the amount of awarded attorney's fees do not exceed the guidelines in Rule 152.4, we find the hearing officer did not abuse his discretion in determining the attorney fee award by the disability determination officer was not excessive.

The attorney in her response alleges that at the CCH she "requested that her claim for attorney's fees be submitted in the whole amount without the reduction since attorney is having to defend the action. That issue was not decided by the Contested Case Hearing Officer." The issue at the CCH was as recited at the beginning of this decision and consequently was broad enough to include a request for attorney's fee without reduction. The hearing officer in his decision and order determined "[t]he TWCC-152 order dated November 24, 1992 is affirmed and it is to (sic) ordered." The attorney first appeals the hearing officer's failure to consider her fee without reduction in her response to claimant's

appeal. We have previously held that points of appeal raised for the first time in a response will not be considered if that response is not filed within 15 days after the decision of the hearing officer is received. Texas Workers' Compensation Commission Appeal No. 92109, decided May 4, 1992. This is in accord with Article 8308-6.41 of the 1989 Act. In that the attorney's response was not filed within 15 days after the hearing officer's decision was received, the attorney's point on the hearing officer's failure to grant attorney's request for her original attorney fee without reduction will not be considered.

The decision of the hearing officer approving the attorney fees in the amount of \$937.50 is affirmed, provided that the aggregate fee shall not exceed 25% of claimant's recovery in accordance with Rule 152.3(d).

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Lynda H. Nesenholtz  
Appeals Judge